

BOARD OF APPEALS CASE NO. 5330

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BEFORE THE

APPLICANT: William Youngworth

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow an attached
garage within the 30 foot front yard setback;
801 Oaklawn Drive, Forest Hill**

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OF HARFORD COUNTY

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Hearing Advertised

Aegis: 2/26/03 & 3/5/03

Record: 2/28/03 & 3/7/03

HEARING DATE: April 7, 2003

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ZONING HEARING EXAMINER'S DECISION

The Applicant, William Youngworth, is requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to allow an attached garage within the required 30 foot front yard setback (28 foot proposed) in an R2/COS District.

The subject parcel is located at 801 Oaklawn Drive within the Forest Lakes subdivision. The parcel is more particularly identified on Tax Map 40, Grid 2D, Parcel 321, Lot 528. The parcel consists of 0.21 acres, is zoned R2/COS and is entirely within the Third Election District.

Mr. William Youngworth appeared and testified that he plans to add an addition to the existing house to provide a three car garage. The existing garage is two-car and is built to a 28 foot setback which was allowed as part of the original construction. He would like to utilize the existing roofline for the new addition. Additionally, there are outside electrical/gas connections that would come into play if the garage were moved back to accommodate the setback requirement.

Mr. John Mettee appeared and testified that he is the President of the Forest Lakes Homeowner's Association. Mr. Mettee stated that the Applicant had applied for permission to construct the addition and that the association found the proposal compatible with other homes in the subdivision. Mr. Mettee testified that there are a number of homes within the subdivision that have three car garages.

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Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning and testified that the Department recommended denial of the application. Mr. McClune pointed out that the Harford County Code differentiates between a garage that is integral to the design of the home and can enjoy a reduced setback, from those garage additions that are not integral to the design and serve as additions to the original home. In his opinion, the proposed garage is not integral to the design and cannot utilize the reduced setback requirements provided by the Code. Further, the Department found nothing unique about the subject parcel that would require a variance. The garage can easily be placed the necessary 2 - 3 feet rearward without the need for a variance. The request results not from the uniqueness or unusualness of the property itself, but rather, the Applicant's desire to simplify the construction and utilize existing roof lines. Mr. McClune also pointed out that none of the homes in this section of Forest lakes were designed with three car garages. There are other larger lot sections where some homes had, as integral to the design, three car garages.

In opposition appeared Mrs. Susan Domozych who lives in the subdivision of Forest Lakes at 2007 Garden Drive. The witness is opposed to the variance. There are no three car garages in this section of Forest Lakes and she feels that such a structure is incompatible with the other homes existing in that immediate area. Additionally, the witness indicated that there was nothing unique about the Applicant's property that would justify a variance of this nature.

CONCLUSION

The Applicant, William Youngworth, is requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to allow an attached garage within the required 30 foot front yard setback (28 feet proposed) in an R2/COS District.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.

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- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

In Maryland, the law regarding variances is well settled and the law was summarized by the Court of Special Appeals in the case of Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995), wherein the Court said:

"The variance process is a two-step, sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists.

It is the uniqueness or peculiarity of the property causing an abnormal impact of the ordinance upon the property that must be addressed and found to exist before the practical difficulties are considered. The term, "unique" in the zoning context means:

In the zoning context, the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon the neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e. its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls. North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994)

The uniqueness or peculiarity of the property is one which is not shared by neighboring properties and where the uniqueness of the property results in an extraordinary impact upon it by virtue of the operation of the statute. The uniqueness must exist in conjunction with the ordinance's more severe impact."

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Applying the principles of Cromwell, supra, the Hearing Examiner concludes that there are no unique or unusual circumstances associated with this parcel that would justify a variance. The Examiner is well aware that in Board of Appeals Case No. 4821, the corner lot configuration of this parcel was found sufficiently unique to justify a variance related to a sunroom addition. However, in that case, unlike the present case, the corner lot configuration and related setbacks actually create the need for the variance. In the instant case, it is neither corner lot configuration nor the associated setbacks that contribute to the necessity of the variance, rather, it is the Applicant's desire to utilize the existing roofline that underlies this request. Additionally, there is no real hardship that would result from a denial since the Applicant, according to the testimony of all of the witnesses, can construct the garage without the need for a variance by simply placing the garage 2 feet further back on the parcel.

For the reasons stated herein, the Hearing Examiner recommends denial of the subject request.

Date MAY 5, 2003

William F. Casey
Zoning Hearing Examiner